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ARIZONA SUPREME COURT

In the matter of:)	
)	
RULE 47.3, THE RULES OF)	Supreme Court No. 18-0030
PROCEDURE FOR THE JUVENILE)	
COURT CONCERNING CHILD)	COMMENT
REMOVAL)	
_____)	

Pursuant to Rule 28 of the Rules of the Supreme Court and this Court’s order of June 8, 2018, David K. Byers, Administrative Director, Administrative Office of the Courts, respectfully files this comment recommending an additional amendment to Rule 47.3 of the Rules of Procedure for the Juvenile Court as stated in Appendix A. The proposed additional amendment further clarifies the rule to implement amendments to A.R.S. § 8-821 enacted by [Laws 2018, Chapter 191, SB 1395](#).

The Court distributed for comment changes in Rule 47.3 that limit the temporary custody authorized under the rule to temporary custody by “the Department of Child Safety.” This is consistent with the language of the 2018 legislation that provides the court may authorize “the department to take temporary custody of a child.” Though a peace officer may provide “a sworn statement or

testimony,” A.R.S. § 8-821 does not provide for an order authorizing law enforcement custody of a child. Consistent with this statute, an additional change in subsection D (3) from “applicant” to “Department of Child Safety” is recommended as reflected in Appendix A.

Respectfully submitted this 18th day of September, 2018.

By /S/
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Appendix A

Rule 47.3 Court Authorized Removal

A. -C. [No additional change.]

D. Findings and Order.

1. Content. The order must state whether there is ~~reasonable grounds probable cause~~ to believe that ~~ex parte~~ authorization of temporary custody of the child is clearly necessary to prevent abuse or neglect, and whether remaining in the child's current home is contrary to the welfare of the child as required by Rule 47.1(A). An order granting an application must ~~include~~: (a) identify the a-factual basis for the determination authorizing temporary custody of each child, and (b) ~~the identity and description with reasonable particularity of~~ identify and describe each child with reasonable particularity to be placed in ex parte temporary custody.

Additionally, for an Indian child, under 25 C.F.R. § 23.113(b)(1) the court must find that ~~ex parte authorization of~~ temporary custody is necessary to prevent imminent physical damage or harm to the child.

2. Form. If the applicant and judicial officer are not in each other's physical presence, the ~~judge~~ judicial officer may sign the order authorizing ~~ex parte~~ temporary custody using an electronic signature to serve as the original order, orally authorize the applicant to sign the ~~judge's~~ judicial officer's name on the order, or sign an electronically transmitted version of the original order which is then deemed to be the original. The judicial officer will record the time and date of issuance of an orally authorized order on the original order and the applicant will send the duplicate original order to the judicial officer who issued the order.

3. Notice. The ~~applicant~~ Department of Child Safety must provide the parent or other custodian a copy of the ~~ex parte temporary custody~~ application and the order authorizing ~~ex parte~~ temporary custody when ~~and~~ the Temporary Custody Notice (TCN) is provided as required by law unless the applicant determines disclosure would cause harm under A.R.S. §§ 8-471, -807(L), or other provisions of state or federal law, and the applicant provides notice of the order in the TCN.

4. Execution and Duration. The ~~applicant~~ Department of Child Safety may execute the order until there is a material change in the factual basis for the ~~reasonable grounds probable cause~~ determination and within ten calendar days of issuance of the order. The temporary custody authorized by the order will expire after 72 hours excluding Saturdays, Sundays and holidays unless a dependency

petition is filed. The court with dependency jurisdiction over the child will review continuation of temporary custody as provided in rules 50 and 51.

5. Filing: The applicant must file the application and order when the dependency petition is filed.
